

## REMARKS

Reconsideration and allowance in view of the foregoing amendments and the following remarks is respectfully requested. Upon entry of this Amendment, claims 5-7, 16, 21-33, and 36-38 will be pending in the present application. Claims 1-4, 8-15, and 17-20 have been cancelled. Claims 34 and 35 have been withdrawn from consideration

Claims 5-7, 16, 21-23 and 36-38 stand rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the Examiner stated that there was insufficient antecedent basis for the limitation "the bottom wall" in claims 5 and 16. In response, Applicant has amended claims 5, and 16 to recite that the container has a bottom container wall and upstanding container walls. In addition, claims 5 and 16 were amended to recite that the insulator has a bottom insulating wall and upstanding insulating walls. Reconsideration is requested.

Claims 5-7, 24, and 36-37 stand rejected under 35 U.S.C. § 103 as obvious over U.S. Patent No. 4,899,904 to Dooley et al. ("Dooley") in light of U.S. Patent No. 4,106,597 to Shook et al. ("Shook"), U.S. Patent No. 4,293,079 to Lytle ("Lytle") and U.S. Patent No. 6,305,299 to Ragland ("Ragland"). Specifically, the Examiner concluded that Dooley discloses an insulating container but that Dooley did not disclose the partition which extends proximate the lid or the latches. The Examiner further concluded that Shook discloses an insulating foam material with a partition that extends proximate the lid and that it would be obvious to modify Dooley "by extending the partitions upwardly in close proximate to the lid in order to deepen the wells or compartments to allow for more storage in each well as well as to isolate one well from another to inhibit the transfer of items contained in the wells and inhibit the flow of heat from

the higher temperature well to the lower temperature well.” However, even if it would be obvious to combine these references, the Examiner found it further necessary, and obvious, to combine Ragland which the Examiner concluded teaches a latch “to removably attach a full height liner.” However, Ragland was also deficient since it does not disclose latches on oppositely disposed walls. To supplement this deficiency, the Examiner concluded that it would be further obvious to combine Lytle with Ragland and Shook and Dooley. Applicant traverses this rejection for the following reasons.

First, the invention recited in claim 5 recites that the insulating layer includes “an elongate partition extending between the insulating bottom wall and the lid.” Similarly, claim 24 recites that the insulating layer has “an elongate partition extending proximate the lid such that each compartment is substantially thermally isolated from one another . . . .” Dooley does not recognize the desirability of having an elongate partition. Moreover, to modify Dooley, as suggested by the Examiner, would render Dooley unsuitable for its intended purpose. It would not be obvious to modify a reference in a manner that renders it inoperable for its intended purpose. Dooley was configured to provide a cooler with a sloped section so that beverage cans would roll out when front panel 34 is opened. If anything, Dooley teaches away from the invention recited in claim 5, Dooley permits ice to be placed on either side and over the beverage cans thus creating a single temperature zone rather than two “thermally isolated” compartments as recited in claims 5 and 16. There is no teaching that it would be obvious to create two thermally isolated compartments.

Shook does not cure the deficiencies of Dooley. In addition, Shook teaches away from the use of an elongate portion to substantially thermally isolate each compartment from one another as recited

in claims 5 and 24. The cavities recited in Shook are not analogous to the compartments as recited in claims 5, and 24. If anything, they seem more analogous to the coupling cavities of the applicant's invention. These cavities are repeatedly described as being of such a shape and size to mattingly receive the beverage and food containers in order to retain these items snugly within their cavities. (Col, 4, ll. 30-35). This does not provide space for ice packs or heat packs and thus can not provide for different relative temperatures between two compartments as recited in claims 5 and 16. Of course, the cavities of Shook could be made larger to accept an ice pack or a heat packs; however, doing so would result in no longer permitting the items to be held in a matting configuration. For a device which may be placed flat as shown in Fig. 1 or carried by handle in another orientation, permitting the items to slip and slide around potentially resulting in damaging the items or the case. It would not be obvious to modify the reference in a manner that destroys the device for its intended purpose.

Secondly, although Shook discloses a case with an insulating liner, Dooley does not disclose a liner which conforms with the shape of the insulating layer. The inner shell (64) of Dooley was spaced from the insulating liner (62). Between the liner and the shell is a cartridge which in turn is filled with beverage cans. Dooley does not have a liner which approximately conforms with the contours of the insulating layer as recited in claims 5 and 24. Shook does not disclose a liner at all and certainly not a liner which conforms to the contours of the insulating layer. The only structure even remotely analogous would be the lid (28) which does not conform to the contours of the insulating liner (62). Reconsideration of these rejections is requested.

Claims 16, 21-23, 30 and 33 stand rejected under 35 U.S.C. § 103 as obvious over U.S. Patent No. 4,899,904 to Dooley et al. ("Dooley") in light of U.S. Patent No. 6,527,116 to Gale ("Gale"). The Examiner concluded that Dooley disclosed the invention except for the recess in the underside of the lid. However, as noted above with respect to the previous rejection, Dooley is deficient, and Gale does not supplement the deficiencies highlighted above with respect to Dooley. Specifically, Dooley does not disclose an elongate partition which is capable of substantially thermally isolating one compartment from another. In addition, Dooley does not have a liner that conforms with the shape of the insulating layer. These limitations also appear in independent claims 16 and 30. Gale does not disclose an elongate partition or a liner at all, and certainly not a liner which conforms with an insulating layer. Reconsideration is requested.

Claims 25-29 stand rejected under 35 U.S.C. § 103 as obvious over U.S. Patent No. 4,899,904 to Dooley et al. ("Dooley") in light of U.S. Patent No. 4,106,597 to Shook et al. ("Shook"), U.S. Patent No. 4,293,079 to Lytle ("Lytle") and U.S. Patent No. 6,305,299 to Ragland ("Ragland") and further in view of U.S. Patent No. 6,527,116 to Gale ("Gale"). As discussed above with respect to the rejection to claims 24, claims 25-29 are allowable over the art of record for the reasons stated above. In addition, Applicants contend that the particular diameters recited in claims 25-29 further distinguish these claims over the art of record. The particular diameters selected are only obvious in hindsight. At the time the invention was made, the Applicant could have selected from a variety of differently sized/shaped holes. Furthermore, while the structure disclosed in Gale is configured to fit a single bottle with the top in location and the bottom in the location of the insert. However, Gale does not propose a single structure

which is configured to accommodate a variety of different containers. Gale can not be construed as contemplating the present invention. Reconsideration is requested.

Claims 31 and 32 stand rejected under 35 U.S.C. § 103 as obvious over U.S. Patent No. 4,899,904 to Dooley et al. ("Dooley") in light of Gale and further in light of Lytle and Ragland. Applicant traverses these rejections for the reasons presented above with respect to claim 30. Reconsideration is requested.

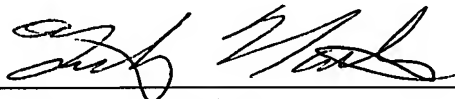
Claim 38 stands rejected under 35 U.S.C. § 103 as obvious over Dooley, Shook Lytle, and Ragland and further in light of U.S. Patent No. to Bartolomew ("Bartolomew") Specifically, Applicant contends that the cited references render the invention recited in claim 38 as obvious except for the rib disclosed in Bartolomew. Applicant overcomes this rejection for the reasons stated above with respect to claim 5. Reconsideration is requested.

This response is being filed within the extended three-month statutory response period which expires on January 11, 2009. A petition for extension of time accompanies this response.

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All objections and rejections have been addressed. It is respectfully submitted that the present application is in condition for allowance and a Notice to that effect is earnestly solicited.

Respectfully submitted,

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